

17854 Kieberman

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200259

DATE: April 22, 1981

MATTER OF: Dragon Services, Inc. **DLG00573**

DIGEST:

1. Protest relating to alleged defects in solicitation must be filed with GAO prior to closing date for receipt of initial proposals.
2. Determination that proposal is technically unacceptable is within contracting agency's discretion and will not be disturbed absent clear showing that it was arbitrary or unreasonable, which is not provided by protester's mere disagreement with agency assessment.
3. GAO will not question agency decision to make award prior to resolution of protest where decision to do so was made in accordance with applicable regulations.
4. Claim for proposal preparation costs is denied where claimant has not shown that agency lacked reasonable basis in excluding proposal from competitive range.

DLG00574

Dragon Services, Inc. (Dragon), protests the award of a contract to Amity Advertising & Letter Service, Inc. (Amity), under request for proposals (RFP) No. CI 80-0441 issued by the Environmental Protection Agency (EPA) for certain publication and mailing address labeling services. Dragon asserts that the RFP was deficient in a number of respects and that the company was improperly excluded from the competition. Based on our review of the record, the protest is denied in part and dismissed in part.

[Protest of EPA Contract Award]

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The RFP required submission of initial proposals by July 29, 1980. On August 6, 1980, an EPA evaluation panel met and, as a result of its findings, only Amity's proposal was found to be in the competitive range for the procurement; Dragon's proposal and the proposals of two other companies were determined to be technically unacceptable. These determinations were based on numerical scores assigned under the RFP's evaluation scheme which provided:

<u>"Criteria</u>	<u>Points</u>
"Demonstrate experience in publication-distribution and warehousing	50
"Demonstrated ability to implement and operate a computerized mailing address system whereby the EPA mailing list of approximately 90,000 names can be manipulated into the various formats as set forth in the Statement of Work and generate mailing labels from these formats.	30
"Demonstrate the ability to hire and maintain with a minimum turnover the services of a competent workforce * * *.	10
"Adequacy of management plans * * *.	10"

After receiving notification that its proposal was unacceptable, Dragon protested to our Office on September 8, 1980. EPA subsequently awarded the contract to Amity, notwithstanding the pendency of the protest, under the authority of Federal Procurement Regulations (FPR) § 1-2.407-8(b)(4)(iii) (1964 ed. amend. 68), discussed below.

The bulk of Dragon's complaints relates to alleged deficiencies in the solicitation, which Dragon believes is "ambiguous or at least leaves enough margin of uncertainty as to permit bidders to arrive at far different cost estimates or understanding of the work required."

Dragon's protest as to the alleged solicitation defects is untimely because it was not filed prior to the date for receipt of initial proposals as required under § 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980). Consequently, we will not consider this part of the protest.

Dragon also contends that the agency determination that its proposal was technically unacceptable is "preposterous" because the proposal clearly demonstrates Dragon's ability to provide the required services. In particular, Dragon takes exception to the agency justification for its scores vis-a-vis those received by Amity under the same criteria headings.

Determinations by procuring agencies regarding the technical merits of proposals will be questioned by this Office only upon a clear showing of unreasonableness, abuse of discretion, or a violation of the procurement statutes and regulations. See, for example, Automatic Informational Retrieval Systems, Inc., B-188550, August 4, 1977, 77-2 CPD 80. The fact that the protester does not agree with the agency's evaluation does not, thereby, render the evaluation arbitrary or illegal. See, for example, Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

Further, as we have frequently stated, it is not the function of this Office to evaluate proposals in order to determine which should have been selected for award; the determination of the relative merits of proposals is the responsibility of the contracting agency and must not be disturbed unless shown by the protester to be arbitrary or in violation of procurement statute or regulation. See, for example, Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386.

Dragon's exclusion from the competitive range for this proposal has been explained in general terms by the contracting officer, as follows:

"Dragon has attained a score which represents 54% of the essential qualities desired. A review of the scoring shows that Dragon had no previous experience in

the computer business and does not demonstrate their ability to implement and operate a computerized mailing address system. The computerized mailing list as specified in the Statement of Work * * * is extremely sophisticated. The system must have the capability of coding each addressee in the system in a variety of ways and using various parameters in the coding process.

"The Dragon proposal failed to demonstrate an ability to operate and maintain a system capable of the sophistication required. The Dragon proposal indicated no previous experience by the company in the actual generation of labels from a computerized mailing list nor did they indicate any experience in the manipulation of a computerized mailing system to identify a specific audience that had already been coded into each addressee's record.

"Their proposal to purchase a computer, printer and terminal and operate the computerized mailing list on this equipment with no previous experience in the computer business does not demonstrate their ability to implement and operate a computerized mailing system."

Specifically, the evaluators for the procurement determined that Dragon's proposal was entitled to about only 50 percent of the points assigned the successful offeror's proposal under the criteria relating to experience in publication-distribution and computerized mailing address systems which were worth 80 percent of the technical points involved.

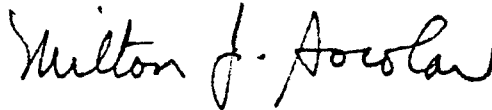
In replying to EPA's analysis, Dragon mainly argues that the evaluators improperly overlooked its experience on a "very similar [contract] in the Research Triangle Park for the EPA."

Contrary to Dragon's argument, the record shows that the evaluators did consider this EPA contract experience in evaluating the company's proposal. However, the EPA evaluators determined that Dragon's experience was of limited value because it was relatively brief in duration, it involved utilization of an existing, intact publication-distribution system, and it did not involve experience in the actual operation of the requisite computerized mailing address list system. While Dragon disagrees with this assessment, it has not provided any showing that EPA's evaluation was arbitrary or unreasonable. Consequently, we must accept EPA's conclusion, and we deny this part of Dragon's protest.

Dragon has also objected to EPA's award of the contract to Amity during the pendency of Dragon's protest. FPR § 1-2.407-8(b)(4)(iii), above, provides that an award may be made prior to resolution of a written protest if the contracting officer determines a prompt award will be advantageous to the Government. The contracting officer made such a determination on September 29, 1980, obtained approval at a higher level within the EPA, and notified our Office of his intention to award to Amity before resolution of Dragon's protest in accordance with FPR § 1-2.407-8(b)(3) (1964 ed. amend. 68). Therefore, since the contracting officer acted in accordance with applicable regulations, the decision to make award, notwithstanding Dragon's protest, is not subject to objection by our Office. New England Telephone and Telegraph Company, 59 Comp. Gen. _____ (B-197297, September 25, 1980), 80-2 CPD 225.

Dragon has also asserted that it is entitled to proposal preparation costs of \$1,250. However, a prerequisite for entitlement to proposal preparation costs is a showing that the Government acted arbitrarily or capriciously with respect to a claimant's bid or proposal. Scona, Inc., B-191894, January 23, 1979, 79-1 CPD 43. In this instance, Dragon has not shown that EPA lacked a reasonable basis for excluding Dragon's proposal from the competitive range.

Accordingly, the protest is denied in part and dismissed in part, and the claim for proposal preparation costs is denied.

A handwritten signature in cursive script, reading "Milton J. Arosola".

Acting Comptroller General
of the United States